◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE P.S. NARAYANA

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+ W.P.No. 13493 OF 1995

% Dated 29.10.2004

 # T. Anoop Singh (died) and others

…. Petitioners

Vs.

$ The Chairman, A.P. State Electricity Board, Hyderabad and another

….Respondents

! Counsel for petitioners: Mr. J.R. Manohar Rao

^Counsel for Respondents: Mr. S. Ravindranath,

<GIST:

> HEAD NOTE:

? Cases referred

1. (2001) 1 Supreme Court Cases 214;
2. (2002) 6 Supreme Court Cases 552;
3. (2000) 5 SCC 65

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 13493 of 1995

Between:

1 Anoop singh (died) S/o. sri Raju Singh
APSEB R/o.Hyderabad.
2 Smt.Anandi W/o. Anoop Singh
R/o.Hyderabad.
3 T.Sudhir Singh S/o. Anoop Singh
R/o.Hyderabad.
4 T.Sailesh Singh S/o. Anoop Singh
R/o.Hyderabad.
5 T.Chetana D/o. Anoop Singh
R/o.Hyderabad.
6 T.Nanisa D/o. Anoop Singh
R/o.Hyderabad. 2to 6 brought as per record as LRs of deceased as Court Order Dt: 18-8-97 in WPMP:19220/97.

..... PETITIONER(S)

AND

1 The Chairman
APSEB , Hyderabad.
2 Member secretary (Personal services)
Vidyuth Soudha , APSEB Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of writ of Certiorari calling for the records relating to Memo No.DP/DM/V/S.II/1550-L3/81-50 Dt: 12-4-89 issued by the 2nd respondent and consequential Memo No.DP/DM.V/7.Q2/90-6 Dt: 6-4-95 issued by the 1st respondent and quash the same by holding the regulations 28(3) of A.P. State Electricity Board Service regulations Part-II as illegal bad and arbitrary and set aside the same and pass such other order or orders.

Counsel for the Petitioners: MR.J.R.MANOHAR RAO

Counsel for the Respondents: MR.S.RAVINDRANATH

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P. No. 13493 of 1995

JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

In this writ petition a memo dated 12.4.1989 issued by 2nd respondent and consequential memo dt. 6.4.1995 issued by 1st respondent have been challenged.

The petitioner was working as Additional Assistant Engineer at T.L.C. Stores, Hyderabad. He was transferred to Sirpur Kazagnagar on 3.2.1987. Earlier to his transfer, proceedings were taken against him for recovery of an amount of Rs.5,67,911-42 ps. and an enquiry was pending. The petitioner felt that his transfer from Hyderabad to Sirpur Kazagnagar was not proper when the enquiry was pending in Hyderabad. Therefore he filed a writ petition and during the pendency of the writ petition he made a representation that he would join at Sirpur Kagaznagar as and when the enquiry was decided. He submitted leave application during the pendency of the writ petition and thereafter submitted a joining report pending writ petition. 2nd respondent issued a memo on 12.4.1989 stating that in view of the regulation 28 (3) of the A.P. State Electricity Board, he was deemed to have resigned from service with effect from 1.4.1987 on the ground that he was unauthorisedly absent. He submits that he had applied leave with effect from 1.4.1987 and the respondents could have sanctioned the leave. According to him, Regulation 28 (1) lays down that a board servant who does not resume duty after remaining on leave for a continuous period of 5 years, be deemed to have

resigned and shall accordingly cease to be a board employee and Regulation 28 (3) contemplates that an employee who remained unauthorisedly absent from duty for a continuous period of one year shall be deemed to have resigned from service from the date of absence. The petitioner submits that once he submitted leave application, the respondents could not have resorted to action under Regulation 28 (3). Aggrieved by the memo dt. 12.4.1989, the petitioner filed a writ petition being WP No. 10602 of 1989 and he also challenged the validity of Regulation 28 (3). But a learned single Judge of this Court upheld the memo dt. 12.4.1989, he, however, did not decide the legality of Regulation 28 (3). The petitioner filed WA No. 1552 of 1989 and a Division Bench of the Court directed the petitioner to file an appeal against the memo dt. 12.4.1989 before the Chairman of the Board. Accordingly he filed an appeal before the Chairman of the Board on 9.1.1989, but the appeal was not properly considered in spite of the reminders the petitioner submitted on 4.1.1990 and 15.10.1992. Thereafter the impugned memo dt. 6.4.1995 was issued by 2nd respondent. Hence the present writ petition.

In the counter-affidavit it is submitted that the petitioner was placed under suspension with effect from 6.1.1982 for shortage of material. Executive Engineer/TLC/Bhadrachalam was appointed Enquiry Officer on 16.12.1981. The enquiry officer framed charges against the petitioner and conducted enquiry in accordance with rules. The enquiry officer submitted a report holding that the charges were proved against the petitioner. A show case notice was issued on 22.1.1987 for recovery of Rs.5,67,911.42 ps. at the rate of Rs.456.38 ps. per month. The petitioner was reinstated into service and allotted to Chief Engineer/N.Z/W, Warangal and he was posted at Sirpur Kagaznagar vide memo dt. 6.3.1987. The petitioner acknowledged the reposting orders of Superintending Engineer/Operation, Nizamabad on 1.4.1987, but he did not report to duty. He filed a writ petition being WP No. 5982 of 1987 against the show cause notice proposing to recover an amount of

Rs.5,67,911.42 ps. and he also sought a direction to the respondents to post him under the control of Superintending Engineer/TLC, Hyderabad. The petitioner also submitted his reply to the show cause notice and the Board passed a final order on 20.4.1987 ordering recovery of Rs.5,67,911.42 ps. On 12.5.1987 the Court passed an interim order directing the Board not to effect any recovery from the salary of the petitioner pending further orders on the writ petition. On 19.5.1987 the petitioner requested for permission to join duty and he was permitted to join duty at Sirpur Kagaznagar, but he did not join duty even after a year from 1.4.1987. Therefore a memo was issued by 2nd respondent on 9.9.1988 under Regulation 28 (3). It is further submitted that the petitioner never submitted any leave application with effect from 1.4.1987. However, he returned the copies of reinstatement orders and posting orders issued by the Chief Engineer/N.Z/Warangal and Superintending Engineer/Operation/Nizamabad in his letters dt. 3.3.1987 and 2.4.1987 stating that he was not accepting these orders and requested for permission to resume duty under the control of Superintending Engineer/TLC/Hyderabad from where he was suspended.

Now the only question which has to be gone into is whether dismissal could be deemed without proper enquiry. Regulation 28 (3) reads,

> "Any employee of the Board who remains unauthorisedly absent from duty for continuous period of one year shall be deemed to have resigned from service from the date of absence and shall automatically cease to be in Board employment"

The petitioner would contend that the Regulation 28 (3) itself was arbitrary and illegal. We do not think that such an argument would detain us because such provisions have been upheld earlier by this Court as well as by the Apex Court in judgments reported in *Punjab & Sind Bank and others Vs. Sakattar Singh* and *Lakshmi*

Precision Screws Ltd. Vs. Ram Bahagat .

The other contention raised at the bar was that without an enquiry, the order of termination could not have been passed. This argument cannot be accepted for the reason that the matter was considered by this Court earlier when the petitioner challenged the original termination order in W.P.No. 10602 of 1989. A learned single Judge of this Court passed the following order,

> "....
>
> The petitioner was posted as Additional Assistant Engineer at Sirpur Kagaznagar by the Superintending Engineer Operation Nizamabad by an order dated 6.3.1987. The posting order was received by the petitioner on 1.4.1987. He did not report for duty forthwith failing which he was informed that suitable disciplinary action would be taken against him. Even then he did nto report for duty. He was again informed through a memo dt. 11.6.1987 that appropriate action would be taken against him if he did not report for duty immediately. As he failed to report for duty for more than a year, the petitioner was asked to submit an explanation why action should not be taken against him under Regulation 28 (3) of the A.P. State Electricity Board Service Regulations, Part-I. The petitioner submitted his explanation. On consideration of the explanation, the impugned order was passed stating that the petitioner shall be deemed to have resigned from service with effect from 1.4.1987 as per regulation 28 (3).
>
> Having regard to the facts and circumstances referred above, I do not see any ground to admit this writ petition."

On appeal, a Division Bench of this Court passed the following order in WA No. 1552 of 1989,

> "We see no grounds to intervene with the order of the learned single Judge. The order challenged in the writ petition is the one passed by the Member Secretary of the A.P. Electricity Board, contained in his Memo No. DP/DM.V./S.II/1550.L3/81,-50, dt. 12.4.1989. Under the said order the Member Secretary declared that the

petitioner-appellant should be deemed to have resigned from service with effect from 1.4.1987 (i.e., the date of absence) and ceased to be in Board's employment as per Regulation 28 (3) of the APSEB Service Regulations Part.I.

Regulation 28 (3) does not specify the authority who shall make the requisite declaration. In this case the declaration is made by the Member Secretary of the Board. Mr. C. Obulapathy Chowdary, the learned Standing Counsel for the APSEB says that against the order of the Secretary an appeal lies to the Chairman, as provided by clause (b) of Regulation 14 of the APSEB employees Discipline and Appeal Regulations. The learned single Judge is therefore right in observing that the petitioner has got a right of appeal against the order impugned in the writ petition and that he should avail of that right.

It is brought to our notice that the Board has passed a separate order directing recovery of Rs.5,67,911.42 ps from the appellant seems to have preferred an appeal to the appellate authority. The learned single Judge has directed that pending the appeal the said amount shall not be recovered from the petitioner/appellant. This is maximum indulgence that this Court could show to the petitioner.

The writ appeal is accordingly dismissed. The appeal as and when filed shall be disposed of as early as possible."

Therefore the matter has been concluded by the judgments of this Court. Even otherwise we do not think that the petitioner has any case on that score. In fact he refused to comply with the order of reinstatement. After he was reinstated into service, the petitioner was posted at Sirpur Kagaznagar. He wrote a letter back to the 2nd respondent refusing to comply with the order of reposting and stated that he would abide by the decision of the Court. The letter written by the petitioner is,

"With reference to show cause notice, I beg to

present the explanation for your kind consideration. I filed writ petition No. 5982 of 1987 before the Hon'ble High Court quashing the validity of the Memo reference under Memo No. DM.IV/49/12/87-1, dt. 27.1.1987 by which I was reinstated and posted to different places. It is a subject matter in the above writ petition. I have been put mentally torture in view of the fact I have been transferred and posted a different place with no fault of mine and further a proposal has been made said order for recovery of Rs.5,67,911-42 ps from me which has put me a lot of inconvenient and mental agony with no fault of mine. I have also explained the situation and circumstances of my case which had been surveillance to you to which counter affidavit has been filed before the Hon'ble High Court. The matter is still pending. The said case is also posted for final hearing before the Hon'ble Court and which is at page No.8, the Hon'ble Justice Mr. Sardar Ali Khan.

In view of the above circumstances, I am waiting for the judgment from Hon'ble Court. I will abide by the decision of the Hon'ble Court. I am fighting for the cause of justice.

In view of the above subject, I am reconciling myself that I may be permitted to join duty. Therefore I request you to kindly issue me the fresh posting orders."

Now coming to the judgments, the learned counsel for the petitioner submitted that the Supreme Court in *Lakshmi Precision Screws Ltd. Vs. Ram Bahagat* (2nd supra) held,

"Having regard to the well-settled principle of law as in D.K. *Yadav V. J.M.A. Industries Ltd.,* (1993) 3 SCC 259) the decision to terminate by reason of a presumption as noticed above, we cannot but lend concurrence to the conclusion of the High Court that the action is purely and surely arbitrary in nature. Arbitrariness is an antithesis to rule of law, equity, fair play and justice — contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice-oriented approach as is the present trend in Indian jurisprudence shall have to read as an inbuilt requirement of the basic of concept of justice, to wit, the doctrine of natural justice,

fairness, equality and rule of law. “

This case was a case in which a show cause notice was given to the petitioner even before the time of ten days had expired. The rule provided that if a workman absents himself for ten consecutive working days without leave shall be deemed to have left the firm’s service without notice, thereby terminating his service. Therefore in those circumstances, the judgment was passed.

However, a 3-Judge Bench of the Supreme Court in a judgment reported in *Punjab & Sind Bank and others Vs. Sakattar Singh* (1st supra) in similar circumstances held that unauthorized absence for 90 or more consecutive days beyond the period of leave originally sanctioned would result in termination of service under clause XVI of IV bipartite settlement. In this judgment the Court held that termination in such circumstances was not punishment for misconduct but was recognition of realities of the situation and would not result in violation of principles of natural justice. It held,

> “We do not also find any material on record to show that he had reported for duty within the period indicated in the notice issued in terms of clause 16 of IV bipartite settlement. In the circumstances, we find the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof.”

Such a rule was upheld by a judgment of the Supreme Court reported in *Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Assn* . Since the matter has been concluded by the earlier judgments of this Court and even otherwise we have not found that there is any violation of principles of natural justice and in fact the petitioner himself refused to join duty on the ground that the writ

petition was pending in the Court, we do not think any interference is called for at this stage. The writ petition is dismissed. No costs.

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BNJ.

Dt. 29.10.2004

KR

_____ PSNJ.

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Sd/-

ASST. REGISTRAR

One Fair copy to the Hon'ble Mr. Justice Bilal Nazki (for his Lordship's kind perusal)

One Fair copy to the Hon'ble Mr. Justice P.S. Narayana (for his Lordship's kind perusal)

To

1. The Chairman, APSEB, Hyderabad.
2. The Member Secretary (Personal services), Vidyuth Soudha, APSEB, Hyderabad.
3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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